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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. JERRY MCCLENDON, Defendant and Appellant.	B291113 (Los Angeles County Super. Ct. No. LA083228)

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard H. Kirschner, Judge. Affirmed.

Joanna McKim, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Jerry McClendon appeals from the judgment following his guilty plea to two counts of robbery and his admission he had a prior robbery conviction. Under the terms of the negotiated plea, McClendon was sentenced to prison for a total of 17 years. Following our independent examination of the entire record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), we conclude no arguable issues exist. Accordingly, we affirm.

PROCEDURAL AND FACTUAL HISTORY

A June 23, 2017 amended information charged McClendon and a codefendant with two counts of second degree robbery (Pen.[1] Code, § 211, 212.5, subd. (c)) and two counts of false imprisonment by violence (§ 236).[2] It was further alleged McClendon had two prior convictions that were serious felonies (§ 667, subd. (a)(1)), serious or violent felonies within the

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[1] All undesignated statutory references are to the Penal Code.

[2] A September 2, 2016 information had also charged McClendon and his codefendant with criminal threats (§ 422), two additional counts of false imprisonment by violence (§ 236), and brandishing a replica gun (§ 417.4). At the preliminary hearing that day, three victims, including one who had identified McClendon in a photo lineup, a live lineup, and in court, testified to each of these crimes. The trial court rejected defense counsel's motion to dismiss, and McClendon was held to answer on all eight counts.

meaning of the Three Strikes law (§§ 667, subd. (d), 1170.12, subd. (b)), and prison priors (667.5, subd. (b).)

On the same day the amended information was filed, both defendants pled not guilty, and the prosecutor and defense counsel announced they were ready for trial, but McClendon asked to address the court about a conflict with his attorney. After conducting a closed hearing pursuant to *People v. Marsden* (1970) 2 Cal.3d 118, the trial court determined there had not been a breakdown in the attorney-client relationship and denied the *Marsden* motion.

Represented by counsel, McClendon then pled guilty to the two robbery counts and admitted one prior robbery conviction in exchange for a 17-year sentence, calculated as follows: the high term of 5 years on the first count, doubled because of the prior strike, plus another 5 years pursuant to section 667, subdivision (a)(1); and on the second count, one-third the 3-year middle term, doubled because of the prior strike.[3] All remaining counts were dismissed.

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[3] After McClendon and his trial counsel completed a felony advisement of rights, waiver and plea form, the trial court confirmed McClendon's understanding and agreement to its provisions before accepting his plea and his admissions as "freely and voluntarily made with a full understanding of the nature and consequences thereof."

On April 24, 2018, pursuant to the negotiated plea agreement, appellant was sentenced to state prison for a term of 17 years.

On May 16, 2018, McClendon broached the topic of appointing new counsel to prepare a motion to withdraw his plea, but after speaking with the new attorney, McClendon withdrew his request.

On June 21, 2018, McClendon filed a notice of appeal challenging the validity of his plea and requested a certificate of probable cause, claiming: (1) his counsel pressured him into taking the plea bargain using his strike convictions in violation of section 1170.12, subdivision (e); (2) the court did not stipulate to a factual basis as outlined in the police reports, preliminary hearing transcript, and pre-plea report before his guilty plea was entered; and (3) he received ineffective assistance of counsel because his "attorney withheld important evidence." The trial court granted the request for a certificate of probable cause.

On September 12, 2018, we appointed appellate counsel for McClendon. After examining the record, on October 11, 2018, appointed counsel filed a brief raising no issues but asking this court to independently review the record on appeal pursuant to *People v. Wende, supra,* 25 Cal.3d 436. On October 12, 2018, we advised McClendon he had 30 days within which to submit by

brief or letter any contentions or argument he wished this court to consider. We received no response.

DISCUSSION

To the extent McClendon intended to raise the three points listed in his request for a certificate of probable cause as issues on appeal, his contentions are without merit.

First, McClendon's reliance on section 1170.12, subdivision (e) is misplaced. This provision mandates that the "prosecution shall plead and prove all known prior serious and/or violent felony convictions and shall not enter into any agreement to strike or seek the dismissal of any prior serious and/or violent felony conviction allegation except as provided in paragraph (2) of subdivision (d)." Therefore, the *prosecution* may not agree to strike or dismiss any prior serious and/or violent felony conviction allegation unless there is insufficient evidence to prove the conviction or in furtherance of justice pursuant to section 1385.[4] (§ 1170.12, subd. (d)(2).) Defense counsel did not violate this provision by communicating the sentence appellant faced—whether he entered a plea or proceeded to trial—because of his prior strike convictions.

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[4] McClendon's trial counsel filed a motion requesting that the trial court strike his prior strike convictions.

Second, as stated in the felony advisement of rights, waiver, and plea form McClendon and his trial counsel signed and as the trial court then confirmed at the plea hearing, trial counsel concurred in the plea and "stipulate[d] to a factual basis as outlined in the police reports, preliminary hearing transcript [and] the pre-plea" report, and the trial court found a factual basis for the plea and admission.

Third, we find no support in the record for appellant's assertion that his trial counsel rendered ineffective assistance or "withheld important evidence."

We have examined the entire record, including the sealed record of the *Marsden* hearing. We are satisfied that no arguable issues exist, and that appellant has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 277; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113.)

DISPOSITION

The judgment is affirmed.

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CURREY, J.

We concur:

MANELLA, P. J.

WILLHITE, J.